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and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 335th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 14 May 1998, at 4.05 p.m.

Chairman: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.335.

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The meeting was called to order at 4.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Kuwait (continued) (CAT/C/37/Add.1)

1. At the invitation of the Chairman, the members of the delegation of Kuwait resumed their places at the Committee table.

2. Mr. AL-NOORI (Kuwait) apologized for the State party's delay in submitting its report, but said that the Committee would appreciate the position of States that were parties to many treaties, each calling for its own report which took a long time to prepare.

3. The full independence of Kuwait's judiciary was ensured by the authority of the Supreme Council of the Magistracy, which was composed of judges. The powers of the Ministry of Justice were in fact nominal or formal; the true authority and power lay with the Council. A copy of the Organization of the Judiciary Act was annexed to the report.

4. Regarding the definition of torture in the Explanatory Note on the Constitution, the intention of the lawmakers was that, if someone was punished, that constituted a penalty and not torture. The Note had been written in extremely pure Arabic, but in translation the intention was no longer clear. In fact, the Constitution forbade torture absolutely; if someone had been prosecuted and was punished, for instance by deprivation of liberty, that deprivation of liberty was a penalty but was not torture. The Note had been mistranslated.

5. Kuwaiti law did not in any way recognize corporal punishment, as stated in the Explanatory Note on the Constitution. So there was no brutal punishment in Kuwait, nor had there ever been any throughout its history. Corporal punishment was considered to be a brutal form of punishment, which was why it was forbidden. As to capital punishment, under articles 218 and 219 of the Code of Criminal Procedure, which regulated the manner of execution, it could be applied only with the Amir's approval. The Attorney-General supervised the execution of the death penalty, either by hanging or by firing squad. Executions always took place within prison grounds and were not public. Pregnant women could not be executed before giving birth, and when they did give birth their sentence was commuted to life imprisonment. Kuwait had never carried out the death penalty for political crimes or crimes of opinion. The death penalty had been decreed for crimes against State security, but most of the sentences passed under that decree had been commuted. Capital punishment was applied under common law. There were many people who had been accused of, and punished for, committing brutal acts, but capital punishment had never been called for in such cases.

6. The instances mentioned in the report where sentence had been passed on public officials were among many such cases. Two examples were case No. 1167, in which police officers had committed an act of aggression against a non-Kuwaiti man, hitting him many times and injuring him. One of those officers had been sentenced to two and a half years' imprisonment and deprived

of his civil rights, while the others involved had received similar sentences. There was also case No. 2785 in 1996, which concerned proceedings against three guards who had committed acts of torture against a Kuwaiti. Those three, who were officials of the Ministry of the Interior, had been tried, and one of them sentenced to two years and four months' penal servitude.

7. Regarding appeal, anybody who felt that his rights had been violated could seek redress in court. The judicial system also offered a number of remedies, such as the right of the citizen to go directly before a civil court, that were not available in all States. Also, the plaintiff was assisted in preparing his case by a department of the court, and was thus not obliged to hire a lawyer.

8. Although national legislation did not contain a definition of torture, the definition contained in the Convention, whose provisions had been incorporated into national legislation, applied. He agreed with those specialists who considered that it could prove restrictive to include such definitions. Indeed, other crimes, such as murder or theft, were not defined in penal codes. He would, however, convey the Committee's opinions to the competent authorities.

9. In response to the question regarding orders from superiors, the judiciary was independent and acts of torture could not be committed under orders from above. Concerning application of the death penalty, some 100 death sentences passed had subsequently been commuted. Note had been taken of the reactions of international human rights organizations, including Amnesty International. Civilian courts had subsequently taken over, and the Court of Appeals and Supreme Court were functioning.

10. On the right to asylum, Kuwait had never extradited anybody who might be in danger of torture. For instance, a request for extradition from the regime of Ayatollah Khomeini had been refused. A document was available on refugees who had been resettled in Kuwait.

11. The number of stateless persons had been overestimated; the State had recently taken steps to improve their situation, as described in the report on the elimination of racial discrimination that had been submitted to the United Nations. New legislation on that subject had been passed by parliament three days previously. The Code of Criminal Procedure specified a number of guarantees applicable in cases of detention. The police, which dealt with misdemeanours, was separate from the Public Prosecutor's Office, which dealt with major offences. Individuals must be granted direct, immediate and unrestricted contact with their lawyer. Kuwait was an open society and any violations of such rights would be extensively discussed by the press, human rights associations and the public in general, thereby precluding any illicit activity by the executive. Solitary confinement was not practised and prisons were open to international organizations such as the ICRC, which could make unannounced visits.

12. In accordance with article 28 of the Constitution, no Kuwaiti citizen had ever been expelled or prevented from returning to Kuwait. Regarding the hypothetical question of an extradition request from Croatia, he could reply only that Kuwait complied scrupulously with the international conventions and

agreements to which it had acceded. The nationality or ideology of the individuals involved was immaterial. Extradition requests were examined in the light of international law. Kuwait had acceded to six bilateral extradition agreements, and to a number of collective conventions within the Arab League, including one on combating torture and one on extradition that included similar concerns.

13. Kuwait had already contributed to a number of humanitarian causes, and the information on the United Nations Fund for Victims of Torture would be conveyed to the competent authorities.

14. Mr. El Masri had raised the matter of education and information regarding human rights; while training was given to members of the police and of the legal professions regarding torture, thought needed to be given to raising awareness in other sectors. An annual course for doctors was offered at the University of Kuwait on human rights in general and on combating torture in particular. Mr. Sørenson's comments on rehabilitation following the invasion of Kuwait required no further discussion.

15. While the Penal Code contained no specific provision relating to compensation for victims of torture, it was possible under ordinary law to sue for damages resulting from torture or any other offence. Since the Convention, which contained such a provision, had force of law, citizens could seek redress on that basis. A number of individuals had sued successfully by invoking that provision.

16. Violations of article 11 had been committed during a transitional period when no legal authority had existed in Kuwait but currently rights were guaranteed under the laws of Kuwait.

17. He thanked Mr. Sørenson for his comments, which corresponded closely to his own sentiments. Mr. Camara's remarks highlighted not only the cordial relationship between Kuwait and Senegal, but also between Kuwait and all the other countries represented on the Committee.

18. As he had stated earlier, he was not in favour of defining torture and considered it preferable to leave the matter to the criteria of ordinary law and the precedents set in the courts. The penalties for acts of torture were set out in article 53 of the Code of Criminal Procedure; they consisted of a fine of 300 dinar and five years' imprisonment for ordinary citizens but were more severe for agents of the State, particularly in the event of the death of the victim, which carried the death penalty. The independence of the Judiciary was reflected in the fact that the Supreme Council of the Magistracy was responsible for all matters relating to the appointment, promotion and dismissal of judges.

19. Kuwait was in fact the primary victim of torture in contemporary history, as was argued in documents that would be made available.

20. Mr. ZUPANČIČ, observing that Kuwait's criminal law did not include the principle of legality, invited the delegation to explain the situation.

21. The CHAIRMAN suggested that the explanation should be provided in writing. The delegation had not fully replied to the question whether a police officer accused of torture could justify his actions on the grounds that he was merely following the orders of a superior officer. Similarly, was the defence of necessity admissible in Kuwait?

22. Mr. CAMARA, referring to paragraph 105 of the report (CAT/C/37/Add.1), asked whether a person could be held in custody for more than four days with a written order. What was the maximum period of detention in custody?

23. Mr. AL-NOORI (Kuwait) said that written replies to the Committee's questions would be provided. Under the Kuwaiti system of justice, crimes were not defined. However, that did not mean that Kuwait's laws were any less fair or just. It was felt that the courts could operate more effectively using that system.

24. The written permission of a police investigator was needed before a person could be kept in custody for more than four days. There had to be good reason for extending the period of detention.

25. The delegation of Kuwait withdrew.

The public part of the meeting was suspended at 5 p.m. and resumed at 5.40 p.m.

Conclusions and recommendations of the Committee

26. At the invitation of the Chairman, the members of the delegation of Kuwait resumed their places at the Committee table.

27. The CHAIRMAN, in his capacity as Country Rapporteur, read out the conclusions and recommendations of the Committee concerning the initial report of Kuwait:

"The Committee considered the first periodic report of Kuwait (CAT/C/37/Add.1) at its 334th and 335th meetings, held on 14 May 1998 (CAT/C/SR.334 and 335/Add.1), and adopted the following conclusions and recommendations:

A. Introduction

1. Kuwait acceded to the Convention against Torture on 8 March 1996 and its first periodic report was due on 7 March 1997. It was received in timely fashion on 15 October 1997.

2. The report accords generally with the guidelines for such reports of the Committee against Torture.

B. Positive aspects

1. Kuwait seems to have in place the necessary legal institutions to combat torture.

2. Kuwait has confronted incidents of torture and prosecuted those responsible.

3. The setting-up of a government-funded torture victims' rehabilitation centre in Kuwait.

C. Factors and difficulties impeding the application of the provisions of the Convention

The Committee against Torture is not aware of any factors that might impede the application of the provisions of the Convention.

D. Subjects of concern

The Committee against Torture is concerned that there is no defined crime of torture in Kuwait.

E. Recommendations

1. That Kuwait consider withdrawing its reservation to the Convention against Torture's article 20 on jurisdiction.

2. That Kuwait consider declaring in favour of articles 21 and 22 of the Convention against Torture.

3. That Kuwait consider enacting in its Criminal Code a defined crime of torture or, if the Convention against Torture, including the definition of torture, applies by incorporation, then an independent crime of torture.

4. The Committee against Torture looks forward to additional explanations to be provided to it in writing as promised."

28. Mr. AL-NOORI (Kuwait) thanked the members of the Committee for their positive recommendations. The reservations Kuwait had entered to the Convention had been merely a temporary measure. International committees and their members and representatives of specialized agencies were allowed to visit prisons in Kuwait, even without prior warning.

29. The question of the definition of the crime of torture would be discussed on future occasions. Kuwait was looking forward to celebrating the United Nations International Day in Support of Victims of Torture which would be held on 26 June 1998.

The meeting rose at 5.45 p.m.